

# HIGH TECH BROADBAND COALITION



October 25, 2004

The Honorable Michael K. Powell  
Chairman of the Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Dear Chairman Powell:

As you know, the High Tech Broadband Coalition ("HTBC" or "Coalition") is committed to the achievement of rapid and ubiquitous deployment of fast, interactive, content-rich and affordable broadband services. To this end, the Coalition champions Federal Communications Commission ("FCC" or "Commission") decisions that deregulate last-mile broadband facilities and expand the availability of inexpensive broadband services to consumers.

In May of this year, HTBC sent you a letter highlighting Commission accomplishments which encourage more investment in broadband facilities and discussing key next steps to further advance such investment.<sup>1</sup> In particular, the Coalition commended the FCC for "free[ing] last mile, wireline broadband investment from unbundling requirements, prompting carriers to accelerate their broadband investment."<sup>2</sup> Recent announcements and investments by telephone companies demonstrate that this policy is already proving to be a success. HTBC also recommended additional important steps that the Commission could take to spur broadband rollout. To this end, HTBC urges the Commission to act now on various measures to expedite the DTV transition and to keep VoIP largely free from regulation.<sup>3</sup>

First, the Coalition applauds the FCC for recently resolving outstanding Petitions for Reconsideration of its *Triennial Review Order* regarding fiber-to-the-curb ("FTTC"), Section 271 unbundling requirements, and Multiple Dwelling Units. The Coalition appreciates the FCC's commitment to a market-based approach in these areas. For example, extending the relief that the Commission afforded fiber-to-the-home ("FTTH") access networks to comparable FTTC access networks will permit companies to choose between FTTH and FTTC networks based on

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<sup>1</sup> Letter from High Tech Broadband Coalition to The Honorable Michael K. Powell (May 6, 2004).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 2, 3.

marketplace characteristics, rather than disparate regulatory treatment. Similarly, the Commission's decision to forbear from enforcing Section 271 unbundling requirements on certain parts of the Bell companies' fiber optic facilities will put the Bell companies on equal footing with all incumbent local exchange carriers in the broadband marketplace. The Coalition is confident that these actions will further drive broadband deployment and facilities-based competition.

Second, HTBC applauds the FCC Media Bureau for setting forth a highly constructive approach to clearing the spectrum of analog television services. HTBC believes that the Bureau plan to accelerate the transition from analog to digital television ("DTV") warrants expeditious consideration. The plan, which would effectively result in a nationwide changeover by January 1, 2009, would bring the DTV transition to a timely and predictable conclusion and minimize disruption to consumers, while opening up important new spectrum opportunities for public safety and advanced wireless services.

The Coalition believes that the television broadcast spectrum should be cleared of legacy analog television transmission by January 1, 2009 at the very latest – and earlier if possible – so that it may be utilized for other valuable services. The vacant spectrum can fulfill our country's need for nationwide, interoperable frequencies for public safety communications. Moreover, a significant amount of the cleared spectrum can be used to facilitate the deployment of advanced and innovative wireless services. For example, in rural areas, utilizing 700 MHz spectrum to provide wireless broadband service requires only 25% of the infrastructure investment that is needed to operate the same service using 2.5 GHz spectrum.<sup>4</sup> For these reasons, HTBC strongly encourages the Commission to establish a date certain for the DTV transition and thereby accelerate ubiquitous and affordable access to broadband services.

Third, the Coalition believes that the FCC needs to take expeditious action in the area of Voice over Internet Protocol ("VoIP") services, particularly with respect to questions of jurisdiction and intercarrier compensation. HTBC believes that quick, forward-thinking decisions on these VoIP-related issues will greatly facilitate a successful and speedy broadband rollout. The Coalition urges the Commission to rule on the jurisdiction issue in the very near future and put out an NPRM on intercarrier compensation before the end of 2004.

With respect to the question of jurisdiction, HTBC believes that VoIP services are interstate in nature and therefore, where subject to regulation, should be subject to exclusive FCC authority. The Coalition believes that this burgeoning IP-enabled service is entirely geographically neutral; it does not require a dedicated transmission facility or even local facilities for that matter. VoIP traffic can travel anywhere in the world with no material difference in cost, and the facilities which act on IP-enabled calls can be located anywhere. Even when a particular VoIP service is associated with a dedicated transmission facility, it is impossible to determine what boundaries the traffic traverses because VoIP CPE and software applications are inherently nomadic and can be used from any broadband connection. Thus,

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<sup>4</sup> Chris Knudsen, "Lower Frequencies Improve the Subscribing Operating Model," WCA Convention, Washington, D.C., June 3, 2004.

HTBC urges the Commission to promptly declare that VoIP services, where subject to regulation, fall within the exclusive jurisdiction of the federal government.

To determine otherwise would subject VoIP to a maze of unnecessary and overly burdensome state regulations that may very well decimate the technology in the marketplace. Indeed, the Coalition is greatly concerned that inappropriate regulation of VoIP services by state commissions will stifle the development of this promising technology and significantly postpone, if not preclude, its deployment to the mainstream consumer. As you know, sixty-two members of Congress (including a bipartisan majority of the House Energy and Commerce Committee) have expressed similar concerns in a letter urging the Commission to expeditiously declare VoIP services interstate in nature and thereby subject to the exclusive jurisdiction of the FCC.<sup>5</sup>

Finally, as we mentioned in our last letter, the Coalition believes that taking prompt steps to reform intercarrier compensation arrangements would further foster VoIP and broadband deployment. By replacing the current, confusing, and obsolete systems for intercarrier compensation with one new, comprehensive, and unified system, the FCC would eliminate much of the economic pressure to regulate VoIP services, while keeping IP-enabled services free from government regulation. For this reason, HTBC urges the Commission to expeditiously consider reform of the intercarrier compensation rules.

Again, the Coalition applauds your past and present leadership in reforming FCC rules to make new and advanced broadband technologies available to all consumers. HTBC looks forward to continuing to work with the Commission to achieve these important goals.

Very truly yours,

BUSINESS SOFTWARE ALLIANCE

By: /s/ Robert Holleyman  
Robert Holleyman  
President and CEO

NATIONAL ASSOCIATION OF  
MANUFACTURERS

By: /s/ John Engler  
John Engler  
President and CEO

CONSUMER ELECTRONICS ASSOCIATION

By: /s/ Gary Shapiro  
Gary Shapiro  
President and CEO

SEMICONDUCTOR INDUSTRY  
ASSOCIATION

By: /s/ George Scalise  
George Scalise  
President

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<sup>5</sup> Letter from Congressman Chip Pickering *et. al.* to The Honorable Michael K. Powell (Oct. 5, 2004).

INFORMATION TECHNOLOGY  
INDUSTRY COUNCIL

By: /s/ Rhett Dawson  
Rhett Dawson  
President

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By: /s/ Matthew Flanigan  
Matthew Flanigan  
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